



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, LRE, CNL, FFT, MNDCT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy (the “Two-Month Notice”);
- An order pursuant to s. 65 that the Landlord provided services or facilities;
- An order pursuant to s. 67 for monetary compensation;
- An order pursuant to s. 70 restricting the Landlord’s right of entry into the rental unit; and
- Return of their filing fee pursuant to s. 72.

M.T., M.A., and R.M. appeared as the Tenants. M.G. appeared as the Landlord. R.M. attended midway through the hearing. She provided no evidence and was not affirmed.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

I was advised by the Tenant that the Landlord was served with their application, evidence, and amendment. The Landlord acknowledges receipt of the Tenants’ application materials. Based on the Landlord’s acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Tenants’ application materials were sufficiently served on the Landlord.

The Landlord indicated evidence had been provided though this appears to have been to the police for reasons that are not germane to this application. The Landlord confirmed he neither served evidence on the Tenants nor did he provide evidence to the Residential Tenancy Branch as required by Rule 3.15 of the Rules of Procedure.

Preliminary Issue – Tenants' Claims

At the outset of the hearing, the parties confirmed that the Tenants vacated the rental unit on May 8, 2022.

As the tenancy is over, there is no longer a dispute with respect to the Tenants' claims under ss. 49, 65, and 70. These aspects of the application are only relevant if the tenancy were active, which it is not.

Accordingly, I dismiss the Tenants claims under ss. 49, 65, and 70 without leave to reapply.

The Tenants allege that the Landlord has obtained a new tenant rather than occupy the rental unit in accordance with the Two-Month Notice. Rule 2.2 of the Rules of Procedure is clear that a party's claims are limited to what is stated in the application. In this instance, the Tenants did not file claiming for compensation under s. 51(2) of the *Act*. I make no comment on that issue except to note that should the Tenants wish to make that claim, they are free to do so by filing an application seeking that relief.

The hearing proceeded strictly based on the Tenants' monetary claim.

Issues to be Decided

- 1) Are the Tenants entitled to a monetary order?
- 2) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on March 31, 2022.
- The Landlord obtained vacant possession of the rental unit on May 8, 2022.
- Rent of \$1,400.00 was due on the first day of each month.
- The Tenants paid a security deposit of \$700.00 to the Landlord.

No written copy of the tenancy agreement was put into evidence.

The Tenants' application indicates that the Tenants seek \$3,000.00 in monetary compensation. The Tenants did not provide a monetary order worksheet.

At the hearing, the Tenants advise that the Landlord had shut off electricity to the rental unit and entered the rental unit without proper notice. The Tenants also testify that the electricity was out on April 30, May 1, May 2, and May 3 and argue that this coincided with the Landlord's attempts to have them vacate the rental unit.

The Landlord denies shutting off electricity and says that the Tenants overloaded a circuit, which was limited to an area of the rental unit. The Tenants clarified that they still had electricity in their kitchen but did not have electricity in their bedrooms and bathroom.

The Tenants say that the Landlord would knock on their door and enter the rental unit. The Landlord denies entering as alleged and indicates that he only entered twice: once with police and the other time with someone from the fire department after a fire alarm went off.

The Tenants evidence includes a series of text messages with the Landlord. At the hearing, I was advised by the Tenants that the Landlord would not respond when the issue of electricity was raised.

The Tenants advise that they are seeking the return of the rent they paid for April 2022 and that the balance of their monetary claim is for the cost of move into and out of the rental unit. No receipts were provided with respect to move-in or move-out expenses. It was argued that the Landlord "pressurized" their living arrangements forcing them to move out shortly after the tenancy started.

Analysis

The Tenants seek a monetary order for compensation.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenants allege that the electricity to the rental unit was cut off by the Landlord to induce them to leave sooner. The Landlord denies cutting off the electricity and says that the Tenants overloaded a circuit due to use. The Tenants clarified their evidence to indicate that only a part of the rental unit had its electricity shut off but that they still had electricity in the kitchen.

The Tenants asked that I review the text messages in their evidence and say that the Landlord was not responsive. I have reviewed the text messages and it does not contain a text message indicating that the electricity was not working, nor does it show that the Landlord was not responsive. The only mention of electricity is with respect to the Tenants indicating there was no heat in the rental unit on March 31, 2022, which the Landlord replied on April 1, 2022 "I have already decided Looks like it.Doesn't work out I can provide you 2months notice" (errors in the original). On April 3, 2022, the Landlord indicates that an electrician was on their way to the rental unit.

I am unable to make a finding on the evidence before me that the Landlord cut-off electricity. I have the Tenants saying the Landlord did do so, I have the Landlord denying it and saying that the circuit overloaded. There is a bare assertion that electricity was terminated from April 30 to May 3 but no proof or correspondence to indicate that the Landlord had been notified of the issue at all. The circuit overload is as

likely and explanation as the Landlord cutting off the electricity as there is no other evidence to support that the electricity was out as alleged by the Tenants. It is the Tenants' claim, they bear the burden of proving the allegation and I find that they have failed to do so.

Looking at the unauthorized entry, the Tenants alleged that the Landlord would enter the rental unit by knocking and entering. The Landlord denies this and says that he only entered with the police and firefighters. Again, there is insufficient evidence to support the allegation that entry was unauthorized. I have conflicting oral testimony from the parties, none of which can be resolved based on the evidence before me. There is mention of the issue in a text message sent from the Tenant to the Landlord on April 3, 2022, however, the Tenants provide little in the way of evidence to support the allegation at the hearing.

I accept that the brief and abortive tenancy was fraught with conflict. However, that is not in and of itself sufficient to give rise to a monetary award for the Tenants. It is the Tenants' claim and they bear the burden of proving it, which includes specific evidence to support their allegations. I find that they have failed to do so and have failed to provide sufficient evidence to support their allegations that the Landlord breached the *Act*, Regulations, or the tenancy agreement. Accordingly, their claim for monetary compensation is dismissed without leave to reapply.

Conclusion

The Tenants' claims under ss. 49, 65, and 70 are dismissed without leave to reapply as the Tenants vacated the rental unit on May 8, 2022.

The Tenants have failed to discharge their evidentiary burden to prove the Landlord has breached the *Act*, Regulations, or the tenancy agreement to give rise to a monetary award. I dismiss their claim for monetary compensation under s. 67 without leave to reapply.

The Tenant's were unsuccessful in their application. Accordingly, I find that they are not entitled to the return of their filing fee. Their claim under s. 72 of the *Act* is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 18, 2022

Residential Tenancy Branch